08-78

Supreme Court, U.S.
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SUPPLEMENTAL

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Appendices U, U-1, U-2, U-3,

U-4 and U-5

Appendix U

Appendices U-1, U-2 and U-3 are three articles the Petitioners have taken from the Seattle Post-Intelligencer. These three appendices just recently appeared in print and are therefore being provided to the Court at this time in the hope of furthering the Court's comprehension of the arrogance and lack of concern many members of the dental profession hold toward the citizens of this nation. In short, these three appendices are excellent examples of how members of the various dental associations/societies place greater emphasis on their own economic interests, than the health and welfare of the public.

Appendix U-4 involves the dental professions continued attempts to dominate everyone working in the dental/dental technology/dental hygiene/dental assisting occupations. Petitioners also believe that "registered dental assistants" will only be allowed to

work for persons described as "licensed dentists." It appears that with such a requirement, registered dental assistants will be denied the right to work for denturists whether they are registered, certified, or licensed. Such a requirement appears to deprive registered dental assistants of their right to choose who they work for under their common law right to earn a living at their chosen occupation.

What the dental quality assurance commission is proposing through the auspices of the Washington State Department of Health is the "REGISTRATION" of dental assistants in the state of Washington through the implementation of WAC 246-817-190. This WAC proclaims that in order "To be eligible for registration as a dental assistant, they must only: (1) Provide a completed application on forms provided by the secretary; (2) Pay applicable fees as defined in WAC 246-817-990' (3) Provide evidence of completion of seven clock hours of AIDS education and training as required by chapter 246-12

WAC Part 8; and (4) Provide any other information determined by the secretary."

Interestingly, prior to the year 1990 when the Department of Health first began regulating the health professions/occupations in the state of Washington, this process was performed by the Washington State Department of Licensing. The Court should be aware that at the time the Petitioners "REGISTERED" with the Washington State Department of Licensing prior to the department of health coming into being, the Petitioners were required to essentially meet the same four requirements as registered dental assistants in WAC 246-817-190. However, after some effective arm twisting by members of dentistry and the dental quality assurance board, members of the Office of The Washington State Attorney General began harassing the registered denturists with lawsuit designed to permanently deprive them of their constitutional right to exercise their common

law rights to earn a living at their chosen occupation; an occupation which has been proven to represent little, if any, potential for harm to the public by The Federal Trade Commission, The Washington State Health Coordinating Council, The Michigan State Department of Health, as well as The Kentucky State Legislature. And, since dental assistants are being "REGISTERED" under identical requirements as denturists were registered by the Washington State Department of Licensing throughout the 1990's, it appears to the Petitioners that individual employees of The Office of The Washington State Attorney General breached the public trust, acted beyond their legitimate authority, acted under color of law, and acted under the appearance of official right when they took it upon themselves to deny prior registered denturists of their common law right to earn a living at their chosen occupation.

Appendix U-5 concerns Case Number 98-066, from The Supreme Court of The State of Montana.

This case, James H. Armstrong, M.D., et al., v The State of Montana, et al., reaffirms the public's right to privacy and self determination as held in the case of Roe v. Wade. Here, the Justices of the Montana State Supreme Court held, in part: "The core constitutional right which is under attack in the case at bar is the fundamental right of individual privacy guaranteed by Article II, Section 10, of the Montana Constitution. Quite simply, the statutory amendments at issue prevent a woman from obtaining a lawful medical procedure – a pre-viability abortion—from a health care provider of her choosing. In so doing, these amendments unconstitutionally infringe a woman's right to individual privacy under Montana's Constitution.

With the right of a woman to privacy inre a decision to undergo an abortion, the Court long ago confirmed the constitutional right of all citizens of this nation to a certain amount of privacy and the right to make decisions relevant to themselves. And,

Roe v. Wade, as with Armstrong v. State of Montana, every citizen of this nation clearly has the constitutional right to decide what medical/dental treatment is best for them without any interference from government; particularly when, as with denturists, there is no evidence showing that anyone has ever been harmed by a denturist or the practice of denturitry.

Petitioners therefore believe they have been erroneously singled out and deprived of their common law rights to earn a living at their chosen occupation solely for the financial benefit of the members of The American Dental Association, The Washington State Dental Association, The Washington Denturist Association, Citizens For Affordable Dentures, et al.

Appendix U-1

Appendix U-1

ENOUGH SCRUTINY IN DENTAL DEATHS?

Tuesday, July 15, 2008

By Carol Smith

P-I reporter

At least three patients have died after dental procedures in the last three years in Washington, and critics say some of the cases weren't examined closely enough by the state's dental disciplinary board.

The Washington Dental Quality Assurance Commission found no wrongdoing in all three cases.

But one case was closed within two weeks after a panel of commission members looked at the dentist's account of what happened and decided not to review any outside documents, such as hospital records. Each of the other cases was investigated, but then closed without charges and therefore without a full hearing by the board.

In one of those cases, the dental board

determined there was no basis to take action against the dentist, who is also a doctor, but the state's medical board has filed unprofessional conduct charges against him for the same oral surgery.

Because no action was taken by the dental board in any of the cases, none of the deaths shows up on the state Web site where consumers can check their dentists' histories.

Dental-patient deaths are rare, but consumer advocates say each occurrence should be carefully reviewed and given a full hearing – if only to see whether new precautions are warranted.

"When it comes to death cases, the board sure doesn't do well, said Fred Quarnstrom, a Seattle dentist who recently resigned from the dental board. "I think they should go to a hearing. Why is it a secret?"

The handling of the three known cases raises questions about the consistency and thoroughness of the state's review process, Quarnstrom said.

It also highlights that the public, and even other board members, have no way of knowing a death occurred, how well it was investigated, or why it was closed without resorting to full-fledged public records disclosure requests.

A Seattle P-I investigation in 2005 found the board had been slow to act, and had cut deals with some of the state's most complained-about dentists. Since then, several legislative changes have resulted in increased disciplinary activity, state health officials said.

Other states have policies ensuring consistent review of any death case.

"We do a full investigation of every death, no matter what – it's mandatory," said Theresa Lane, interim chief of enforcement with the California Dental Bureau, which oversees California dentists.

Under California's system, all records, including coroners' reports and hospital records, as well as records from anyone who treated the patient

prior or subsequent to the dentist are reviewed quickly to determine whether there is a public safety issue at stake, she said. "This is serious when people die."

Texas also collects all records in deaths cases before determining whether a dentist breached the standard of care.

Under Washington's system, however, death cases can be closed before an investigation on the basis of the dentist's "self-report," a narrative summary of the events, said Taylor Stair, disciplinary manager for the Health Professions Quality Assurance division of the state Health Department. Additional records are reviewed only if the case is referred for investigation, she said.

Even if a case goes for further review, that investigation is cloaked from public view unless it results in sanctions or formal discipline. The number of deaths from dental procedures in this state is a mystery, since they aren't tallied separately from

injuries.

Here are details on the three recent deaths, according to information obtained by the P-I:

On June 22, 2007, James "Jimmy" Marks, 62 went to Spokane oral surgeon Mark C. Paxton to have teeth extracted in preparation for dentures. He went into cardiac arrest as he was being put under general anesthesia and suffered brain damage. He died five days later.

Paxton, a former dental board member, had previously been sanctioned in 2005 by the board for using unlicensed assistants to administer general anesthesia, a practice he was ordered to stop, according to state records. In 2007, the board concluded he had complied with the order.

On Oct. 15, 2007, Henry Dillow, 25 had four wisdom teeth pulled by his Seattle oral surgeon, G. Galia Leonard. He died three days later of an aggressive bacterial infection.

On Sept. 28, 2005, an unidentified 89-year-old woman went to Spokane oral surgeon Terrance L. Hauck to have the rest of her teeth pulled for dentures. She died after being sedated.

Hauck, who also is a physician, sits on the dental board. He is on leave from that position pending the outcome of the medical board's investigation of the case. All three cases were reported to the state by the dentists themselves, as required. Health Department officials said a screening panel of the dental board, usually made up of three dentists and one public member, determined whether the cases proceeded to investigation. (To protect against potential bias, the identities of patients and dentists are kept from the reviewing panels.)

In Paxton's case, the panel closed the case without further investigation.

In the other two cases, screening panels referred the matter for investigation. A single dental

board member then reviewed the investigation and presented a summary, plus a recommendation to the charging panel.

In each of the two cases, charging panels elected not to issue either a statement of allegations or a charging statement. Had either of those steps been taken, the matter would have been heard before yet another panel, and any resultant sanctions or actions would have been made public, Stair said.

Quarnstrom and others have argued that serious cases including death cases, should be noted on the public Web site with a brief explanation of how the matter was investigated and why it was closed.

"If it's all done behind closed doors in secret, there's very little chance of the public ever finding out what happened," Quarnstrom said.

In the three dental-patient death cases, screening and charging panels followed the board's protocols, said Health Department spokesman

Gordon MacCracken. "Certainly, they're all looked at seriously," he said.

But consumer health advocates argue that health profession's oversight boards need to be more aggressive about discipline, and that consumers should have more easily accessible information about complaints against their providers.

"How can you know if a death is unexpected if it isn't investigated?" said Dr. Sid Wolfe, director of Public Citizen, a Washington, D.C.-based watchdog group.

While professionals said dental deaths are uncommon, it is difficult to know just how rare they are because the state doesn't break out unexpected deaths that occur as a result of dental procedures in the same way it tracks unexpected deaths in hospitals.

"Although we do have statistics for many places of death – for example, hospitals, nursing homes, hospices and homes – other offices, including

dentists, outpatient surgical centers fall into an 'other' category," MacCracken said.

Dentists are required to report to the dental board any injury or death that results in hospitalization. The board said there were 11 deaths or injuries in the 2006-2007 biennium, up from seven deaths or injuries reported in 2004-2005. The state doesn't break the numbers down further.

According to the American Association of Oral and maxillofacial surgeons, the average rate of anesthesia-related deaths is about 1 in 700,000 visits. Taking the state's population into account, Quarnstrom estimated that the known deaths put Washington's rate above the average, and said that in itself is an argument for more investigations.

"I'm flabbergasted that they aren't" said Quarnstrom, who served four years on the board.

A full investigation involves reviewing the dentist's records and getting statements from other dentists and relevant parties, such as medical

examiners and hospital staff, Stair said.

Procedures used for oversight and discipline of dentists in Washington were the subject of an earlier P-I investigation looked at several closed death cases. In two cases, the experts used by the state to investigate those cases later said their reviews were limited to certain aspects of the cases. One said he had serious concerns about the board's decision to close the case.

The Health Department has cracked down on dentists, said Joy King, executive director of the section that oversees dentists.

The board has taken more serious actions, including license suspensions or revocations, she said, against dentists in the last four years as the Legislature has given it more authority to do so.

Medical board files charges

In the Hauck case, the dental board conducted an investigation, but decided the death of his elderly patient did not warrant any disciplinary action,

according to state records. Hauck is also a licensed doctor and the state's medical board also investigated, but did file charges.

The medical board accuses Hauck of unprofessional conduct related to her care. The charges focus on Hauck's record-keeping, and questioned his use of sedation drugs and handling of the ensuing crisis when her heart stopped.

Hauck's Seattle attorney, John Versnel, said Hauck disputed the charges and that the state had some of its numbers wrong regarding sedation doses. Hauck is in the midst of settling the matter with the state, Versnel said. "It's coming down to an issue concerning charting."

The medical board said Monday that a settlement in the matter has been reached. No details were immediately available.

The medical board charges say there is no discussion or consideration of her advanced age, history of anemia or recent blood transfusion in

Hauck's records. They also allege that Hauck's records did not show he examined her lungs or airway capacity before sedating her, and that his choice of drugs "was excessive for a person of (her) health status."

The dental panel that examined his case, however, found no reason to discipline Hauck and closed the matter, according to state records.

There's no mention on Hauck's dental credential of any pending case involving his medical credential – even though the medical investigation was of a patient undergoing a dental procedure.

The dental board makes its charging decisions based on the standards of care for the dental profession. Each profession has its own standard of care, Stair said.

At the very least, Wolfe said, the medical statement of charges should be cross-referenced on the dental Web site.

Lethal bacterial infection

In the Leonard case, the death was the result of a known but rare complication of surgery, the oral surgeon told the P-I.

Leonard would not comment on the specifics of the case, citing patient confidentiality.

Dillow, the patient, was otherwise healthy when he had four wisdom teeth pulled. He had the teeth extracted on a Monday, was hospitalized on Wednesday and died the next morning. His death certificate listed sepsis and necrotizing faschiitis as the cause of death, according to his mother, Vicki Dillow.

Necrotizing faschiitis, commonly known as flesh-eating disease, is a lethal type of bacterial infection.

The dental board investigated the case, reviewing hospital records and interviewing treating physicians, then concluded there was no basis to take further action, according to state records.

"To be honest, I would have loved to let my

colleagues and everybody know about this very unusual case – to let people know this complication can still happen," Leonard said.

Case closed quickly

In the Paxton case, a lawsuit brought the matter to light.

Jimmy Marks, the leader of a prominent Spokane Gypsy family, was a colorful character and household name in Spokane for many years before his death last year.

Marks, who once put a curse on City Hall, was also a sentimental man with a sense of humor, said his lawyer, Russell Jones, who is also a family friend.

Jones is representing Marks' widow in a lawsuit against Paxton, alleging negligence in his death. Marks was overweight and had had both a pacemaker and a defibrillator implanted within the previous year, said Jones.

Experts for the Marks family have raised questions about whether he should have had the

procedure under general anesthesia, and whether it should have been done in a hospital.

Seattle attorney Versnel, who also represents Paxton, contends Marks was evaluated correctly, that he was well-informed of his risks and that Paxton, who served on the dental board from 2001 to 2005, was well-trained for such cases.

Paxton's handling of the case was "totally appropriate," Versnel said. "That was the conclusion of the commission after they did a preliminary investigation."

Paxton has denied the key allegations in the lawsuit.

In a letter to Versnel's office, the Health Department's discipline committee stated that a dental board panel reviewed a report submitted by Paxton and decided to close the case "prior to investigation as it does not appear to be a violation of the law."

Jones raised questions about whether the

board took that action without reviewing relevant facts. Letters indicate the board received some but not all records from Paxton, and that it had asked for more records, but was turned down by Paxton's attorney.

In a letter to the board dated July 20, 2007, attorneys for Paxton reported marks had been hospitalized. The letter and attached documents included a summary of events as provided by Paxton, but did not include the fact of his death, said Stair, the case manager who oversees dental cases. The board promptly asked for two additional pages of documents referenced in the letter, but not attached, and was turned down.

In a letter dated July 24, 2007, one of Paxton's attorneys wrote: "Prior to providing any additional information to you, or to any representative of the Department of Health, we require formal request supported by proper authority. At this time, we will not be providing any additional information as you

have not provided authority for your request."

On Aug. 8, the Health Department's disciplinary representative sent Paxton's attorneys a letter notifying them the case was closed.

According to Stair, the panel "put two and two together" after reading reports of Marks' death in the Spokane media and realized the patient had died, but the panel closed the case anyway.

But Jones said key documents related to Marks' medical history, anesthesia risk factors and medications he was currently taking were not supplied to the dental board before they made that decision.

"They closed it without looking at all the records," he said.

Washington's medical and dental quality boards each investigated a patient-death case involving oral surgeon Terrance Hauck.

While the dental board found no violations of care, the medical board filed disciplinary charges,

excerpts shown below.

A settlement of that case is pending.

1.18 Respondent's choice of sedation drugs was excessive for a person of Patient A's health status.

1.19 Respondent's choice of sedation drugs was not appropriate for his "IV sedation" care of the patient during the surgery.

1.20 Respondent's monitoring of Patient A's vital signs was not sufficient to readily alert the surgery team of her bradycaria and apnea.

1.21 Respondent did not have proper Advanced Cardio Life Support (ACLS) trained staff and procedures in place to properly maintain an open airway and to react to a potential code of the patient.

1.22 Respondent did not have and/or did not administer proper reversal drugs to counteract the sedation of Patient A so as to better manage her code situation.

SPECIAL REPORT

A 2005 P-I investigation found that the state's dental

disciplinary board had been slow to act and had cut generous deals with some of the state's most complained-about dentists. At the P-I's request, several dental board members and staffers from states around the country reviewed action taken by Washington's dental board – the Dental Quality Assurance Commission – and agreed that the state had given some dentists more leeway than they deserve. Read the stories at **seattlepi.com/specials/dentists.**

Appendix U-2

Appendix U-2

SEATTLE POST-INTELLIGENCER

Thursday, July 17, 2008

By: Carol Smith, P-I reporter

Inquiries on dental deaths urged

State health chief presses board; 4th fatality revealed

Washington's top health official is urging the state dental board to "investigate all patient deaths that occur in connection with dental care" – a policy change that would end cursory reviews of such cases.

In a July 15 letter to the Washington Dental Quality Assurance Commission, Health Secretary Mary Selecky cited a Seattle P-I investigation that showed not all recent deaths were thoroughly examined.

The P-I examined three dental-related deaths that have occurred in the state since 2005.

Selecky's move came as state officials confirmed learning this week of a fourth, previously unreported dental death: a 71-year-old Spokane

patient who had undergone oral surgery for sleep apnea.

The death, which came to light through the media, was not reported by the dentist himself, said Taylor Stair, Disciplinary manager for the Health Department's Health Professions Quality Assurance Division.

Stair said the death has been referred to the dental board to determine whether it warrants further investigation.

Under Selecky's new proposed standard, the case would automatically be investigated.

In her letter to dental board chairman Pramod Sinha, Selecky wrote, "If every case is investigated, the commission can be assured it has all the details needed to make an informed decision for patient safety and public protection."

"It's very encouraging," said Fred Quarnstrom, a Seattle dentist and former board member who has been calling for more thorough investigations. "it's

really, really important" for public safety.

Details of death investigations aren't made available to consumers without formal public disclosure requests unless there have been charges filed, which means most deaths are kept secret from the public.

Dental deaths are also difficult to track.

By law, dentists are required to report any death or injury that results in hospitalization connected to dental care. In the 2006-07 biennium, there were 11 reported deaths and injuries.

But the case of the sleep-apnea patient highlights the fact that not all deaths are reported.

The dentist can only report a death or hospitalization if the dentist is aware of it, said Stair. The way the current law is written, it's also left to the dentist's discretion to decide whether the death or hospitalization is connected to the dental procedure.

However, if a dentist does not report a death

or hospitalization and it's later discovered and determined to be related to dental care, then the dentist would be in violation of the law and subject to sanctions, Stair said.

The reporting procedure also doesn't guarantee a death will be thoroughly investigated.

The P-I investigation found one death case was closed within two weeks without examining records other than the dentist's own account of the death. There is now a malpractice lawsuit pending against that dentist, Mark Paxton of Spokane.

In another case, the dental commission chose not to sanction or charge Spokane oral surgeon Terrance Hauck with breaching the standards of care in the death of an elderly woman, but the state's medical board charged him with unprofessional conduct related to her death.

A settlement in that case was announced Tuesday. Hauck agreed to pay a $10,00 find and his license was placed on probation for two years,

according to state records.

Hauck was also ordered to use a certified anesthesia provider for any high-risk patients, (Petitioners are aware of at least one other oral surgeon who hires women with no anesthetic education or background to put patients to sleep and/or awaken them) and to complete an annual class in sedation procedures. Investigators will also review samples of his records every six months for the duration of his probation.

In an interview Wednesday, Selecky said the dental board assured her it will re-examine its death-investigation procedures at its next meeting later this month.

Sinha, the dental board chairman, was not immediately available for comment.

Under state law, the 16 boards and commissions that oversee health care professions have the right to regulate their own investigative processes.

Selecky said she plans to send a letter similar to the one she sent to the dental board to the other boards and commissions, urging them to make sure they thoroughly investigate every death case associated with a complaint.

"We do take this very seriously," she said. "The death of any patient is tragic."

In response to the P-I investigation, the Health Department also changed its Web site Wednesday so that any action taken against a provider will be cross-referenced under every license held by that provider.

Many oral surgeons are dual-licensed as medical doctors and dentists, but before this week, actions under one license did not show up under the other license. That meant a consumer checking on a dentist's background would not have been able to tell whether the dentist had been sanctioned by the medical board.

"We are always looking at what we can do

around sharing information with the public," said Karen Jensen, acting assistant secretary over the division of Health Systems Quality Assurance.

A panel of the dental board will consider later this week whether to look into the latest Spokane death, Stair said.

According to family member, Jon Gellner, 71, went to Spokane dentist Dr. Patrick Collins in August for a procedure to address sleep apnea. He began bleeding after he was sent home, and was placed on a ventilator at a hospital two days later. He died Sept. 1.

Collins had a previous sanction for a 2006 incident involving his care of an 83-year-old patient, according to state records. Collins, who did not admit to allegations of unprofessional conduct, agreed to an informal type of discipline that involved attending further training in pharmacology and reimbursing the commission $700 for expenses.

Collins could not be reached for comment

Wednesday.

Appendix U-3

Appendix U-3

SEATTLE POST-INTELLIGENCER

Saturday, July 26, 2008

By: Tom Paulson

P-I reporter

Stricter dental death review sought

State board moves to tighten policy

Responding to recent media revelations of dentists failing to report and the profession itself failing to aggressively investigate dental-patient deaths, the state dental board on Friday drafted new language requiring that any "dental-related" death must now undergo a special panel review.

"This policy is intended to clarify how the board will handle these dental-related deaths," said Taylor Stair, a manager of the State Dental Quality Assurance Commission, which held its regular meeting in Spokane on Friday.

Before the language change, Stair explained, the commission had no special process for handling

those rare cases when patients are suspected of dying as a result of a dental procedure.

At least five people are known to have died in Washington over the past three years because of complications from oral surgery.

At least one appears to have never been reported to the state board by the dentist, and none of the other deaths, though reviewed by the dental board, were judged to have merited a full-scale investigation. In some cases, the only information reviewed by the board was that provided by the dentist under investigation. Outside expertise or documentation aimed at evaluating the dentist's report of the circumstances of death often was not considered.

"With this change to policy, a special panel will be convened to review each dental-related death," Stair said. At least five members of the board – four of them dentists and one public member – will be required to specifically consider the patient death

and the surrounding circumstances.

A Seattle dentist and former member of the board criticized the policy change as largely meaningless window dressing.

"It changes nothing," contended Dr. Fred Quarnstrom, who resigned from the board last month as a form of protest against his profession's lack of action on this issue.

Quaranstrom, long a critic of practices by the state dental board that he contended aimed to protect the profession at the expense of the public, said he joined the board in 2004 specifically to change policy regarding adverse-event reporting.

"These deaths are exceedingly rare," he said. But during his tenure on the board, he said every death or near-death incident that appeared potentially related to dentistry was either ignored or summarily reviewed and closed with little investigation.

The Seattle P-I, which in 2005 published a

series of articles revealing how seldom inept or negligent dentists get disciplined, earlier this month featured an article detailing Quarnstrom's complaints of board inaction. This week, the P-I also reported on the potentially dental-related death of 20-year-old Mikhail Manyak. The University of Washington student died Sunday from an allergic reaction to dental medications administered by Dr. Gary Feldman, an oral surgeon.

Quarnstrom, who didn't attend the Spokane meeting of the dental board, said the move to require a special panel review of a patient death is a halfhearted attempt to mollify Mary Selecky, secretary of the state Department of Health.

"It just shows the commission has no intent of changing how they handle these deaths," Quarnstrom said. He noted that, during his time on the board, they would frequently go to a full hearing on a dentist who failed to renew his or her license in time, but never did the board hold a full hearing on

any patient death.

"I think any patient death or near-death should require the board to hold a full hearing and consider expert outside testimony," Quarnstrom said. Anything less, without public scrutiny, is just more professional protectionism, he said.

The dental board is supervised by the state Health Department but operates as an independent professional body. The dental profession, like the medical profession and other health professions, essentially self-regulates and disciplines its own members.

The board on Friday made no changes to the requirement that dentists report adverse events with any patient. Stair said that would require changes to laws or regulations beyond the dental board's authority. But she said the existing rules provide for punishing dentists found to have failed to report a dental-related patient death or hospitalization.

Contrary to Quarnstrom's perspective, Stair

said the dental board is intending to respond to public concerns and Selecky's request for more aggressive investigations of patient deaths.

The commission does take patient safety very seriously she said.

Stair, who was reached by telephone in Spokane at the close of the board's meeting Friday, said the death-review policy will be presented in written form sometime next week.

Neither board chairman Dr. Pramod Sinha nor any of the other members of the dental board were available to comment.

Appendix U-4

Appendix U-4

WSR -8=-7-099

Proposed Rules (Dental Assistants only)

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed March 19, 2008, 10:51 a.m.}

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules provide clear credentialing requirements for registration of dental assistants (DA's) and licensure of expanded function dental auxiliaries (EFDA's).

Statute Being Implemented: Chapter 18.260 RCW

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of Health, dental quality assurance commission, governmental.

NEW SECTION

WAC 246-817-190 Dental assistant registration. To be eligible for registration as a dental assistant you must:

(1) Provide a completed application on forms provided by the secretary;

(2) Pay applicable fees as defined in WAC 246-817-990;

(3) Provide evidence of completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC Part 8; and

(4) Provide any other information determined by the secretary.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 101/10/95, effective 11/10/95)

WAC 246-817-520 Supportive services that may be performed by registered dental assistants. A dentist may allow registered dental assistant to perform the following supportive services under the dentist's close supervision:

(1) Oral inspection, with no diagnosis.

(2) Patient education in oral hygiene.

(3) Place and remove the rubber dam.

(4) Hold in place and remove impression materials after the dentist has placed them.

(5) Take impressions solely for diagnostic and opposing models.

(6) Take impressions and wax bites solely for study casts.

(7) Take impressions, fabricate, and deliver bleaching and fluoride trays.

(8) Remove the excess cement after the dentist has placed a permanent or temporary inlay, crown, bridge or appliance, or around orthodontic bands.

(9) Perform coronal polish.

(10 Give fluoride treatments.

(11)Place periodontal packs.

(12)Remove periodontal packs or sutures.

(13) Place a matrix and wedge for a metallic and nonmetallic direct restorative material after the dentist has prepared the cavity.

(14) Place a temporary filling (as zinc oxide-eugenol (ZOE)) after diagnosis and examination by the dentist

(15) Apply tooth separators as for placement for Class III gold foil.

(16) Fabricate, place, and remove temporary crowns or temporary bridges.

(17) Pack and medicate extraction areas.

(18) Deliver ((a)) an oral sedative drug to patient.

(19) Place topical anesthetics.

(20) Place retraction cord.

(21) Polish restorations at a subsequent appointment.

(22) Select denture shade and mold.

(23 Acid etch.

(24) Apply sealants.

(25) Place dental X-ray film and expose and develop the films.

(26) Take intra-oral and extra-oral photographs.

(27) Take health histories.

(28) Take and record blood pressure and vital signs.

(29) Give preoperative and postoperative instructions.

(30) Assist in the administration of inhalation anxiolysis (nitrous oxide) analgesia or sedation.

(31) Select orthodontic bands for size.

(32) Place and remove orthodontic separators.

(33) Prepare teeth for the bonding or orthodontic appliances.

(34) Fit and adjust headgear.

(35) Remove fixed orthodontic appliances.

(36) Remove and replace arch wires and orthodontic wires.

(37) Take a face bow transfer for mounting study casts.

(38) Take impressions for space maintainers.

(39) Take impressions for orthodontic retainers.

(40) Take impressions for night guards.

[Statutory Authority: RCW 18.32.035. 95-21-041, Section 246-817-520, filed 10/10/95, effective 11/10/95.]

Appendix U-5

Appendix U-5

No. 98-066

IN THE SUPREME COURT OF THE STATE OF MONTANA

1999 MT 261

JAMES H. ARMSTRONG, M.D., et al.

Plaintiffs and Respondents,

v. THE STATE OF MONTANA, et al.,

Defendants and Appellants

Case cited in part only.

Section 1. Plaintiffs James H. Armstrong; Susan Cahill, P.A.; Barbara Polstein, D.O.; Mindy Opper, P.A.; and Blue Mountain Clinic, filed suit in this matter seeking a determination that Section 37-20-103 MCA (1995), and Section 50-20-109, MCA (1995), prohibiting physician assistants-certified from performing abortions, violates the privacy, equal protection and bill of attainder provisions of the Montana Constitution. The

District Court for the First Judicial District, Lewis and Clark County, granted Plaintiffs' motion for a preliminary injunction, protecting the abortion practice of Armstrong and Cahill. The State appeals. We affirm.

Introduction

Standing

Section 2. The core constitutional right which is under attack in the case at bar is the fundamental right of individual privacy guaranteed by Article II, Section 10, of the Montana Constitution. Quite simply, the statutory amendments at issue prevent a woman from obtaining a lawful medical procedure—a pre-viability abortion—from a health care provider of her choosing. In so doing, these amendments unconstitutionally infringe a woman's right to individual privacy under Montana's Constitution.

Section 13. Accordingly, on the basis of the

foregoing and in the context of this case, we resolve the standing issue by adopting the approach of the federal courts. We hold that the Plaintiff health care providers have standing to assert on behalf of their women patients the individual privacy rights under Montana's Constitution of such women to obtain a pre-viability abortion from a health care provider of their choosing.

Section 14. Having thus resolved the standing issue, we also conclude that in the context of this case, Article II, Section 10 of the Montana Constitution broadly guarantees each individual the right to make medical judgments affecting her or his bodily integrity and health in partnership with a chosen health care provider free from government interference. More narrowly, we conclude that Article II, Section 10, protects a woman's right of procreative autonomy—i.e., here, the right

to seek and to obtain a specific lawful medical procedure, a pre-viability abortion, from a health care provider of her choice.

Section 15 importantly, this case requires that we decide who should set the standards for reasonable medical practice and procedure in this State. As in the case at bar, should legislators determine these standards based upon prevailing political ideology, personal values and beliefs, and under pressure from a vocal and powerful constituency? Or, should these standards be set by the medical community in the exercise of its collective professional expertise and judgment, acting through the state's medical examining and licensing authorities, and after taking into consideration the education, training, experience and skills of the health care provider and the patient's health interests?

Section 16 Finally, we must decide whether, in

the case before us the government has demonstrated a compelling state interest for infringing women's right of procreative autonomy guaranteed under Article II, Section 10 of the Montana Constitution. In this regard, we conclude that it has not.

Section 20. Dr. Armstrong and P.A. Cahill, the only physician assistant in the State performing abortions, challenged various provisions of the Act in federal court. Subsequently, the State stipulated to a permanent injunction prohibiting enforcement of Montana's requirement that abortions be performed only by licensed physicians as well as a permanent injunction against the second-trimester hospitalization requirement and the ban on advertising.

Section 22. Smith contended in hearings before the House Committee on Human Services and Aging, and the Senate

Committee on Public Health, Welfare & Safety, that HB 442 was intended to protect women who are seeking abortions from possible complications and that the legislation was a women's health and safety issue. However, at the hearings, Smith and other proponents of the legislation failed to relate any complications or problems encountered by patients of P.A. Cahill during the more than twenty years that P.A. Cahill had been performing abortions.

Section 23. Furthermore, those testifying in support of HB 442 during the February 10, 1995 hearing before the House Committee on Human Services and Aging, and the March 10 1995 hearing before the Senate Committee on Public Health, Welfare and Safety, failed to give any medical justification for excluding physician assistants-certified from performing abortions. Moreover, none of the proponents of

HB 442 testifying before the House Committee and only one of the proponents of HB 442 testifying before the Senate Committee was a licensed physician. Instead, those testifying in favor of HB 442 included representatives of the Montana Right to Life Association, the Montana Catholic conference, and Eagle Forum, as well as the Executive Director of the Montana Christian Coalition.

Section 24. Opponents of HB 442 testified that, since there were no medical reasons why physician assistants-certified could not perform abortions, HB 442 was just another obstacle to affordable health care for women

Section 25. HB 442 was passed by the Montana Legislature and signed into law by Governor Racicot on April 3, 1995. Through the passage of this bill, Section 37-20-103, MCA was amended to include the following sentence: "A physician assistant-certified may

not perform an abortion." And, Section 50-20-109, MCA, was amended to include a new subsection (5) that provides: "The utilization plan of a physician assistant-certified may not provide for performing abortions." In addition, such conduct was criminalized as a felony. Section 26. Dr. Armstrong and P.A. Cahill, along with various other abortion providers, responded to the amendment of Section 37-20-103, MCA, and Section 50-20-109, MCA, by filing suit in federal court to prevent enforcement of the amended statutes regarding physician assistants. They also sought to prevent the enforcement of the second trimester hospitalization requirement and the ban on advertising which were reenacted by the amendment of the statute. The trial court enjoined enforcement of the reenacted abortion restrictions, but declined to grant a preliminary injunction against

enforcement of the ban on Dr. Armstrong's utilization of P.A. Cahill to perform abortions. Armstrong v. Mazurek (D. Mont. 1995), 906 F.Supp. 561.

Section 27. On appeal, the Ninth Circuit vacated the District Court's denial of a preliminary injunction against enforcement of the statutes restricting the performance of abortions to licensed physicians and remanded the case to the District Court. Armstrong v. Mazurek (9th Cir. 1996), 94 F.3d 566. On November 5, 1996, the State consented to an injunction against enforcement of the Act while the State sought review by the United States Supreme Court. The Supreme Court, by a 6-3 vote, determined that Plaintiffs failed to establish the likelihood of prevailing on the merits of their claim that the statutory provisions violated due process by imposing an undue burden on a woman's right to choose to

terminate a pregnancy prior to the viability of the fetus, and thus, Plaintiffs were not entitled to preliminary injunctive relief.

Section 28. On October 1, 1997, following the Supreme Court's ruling, Respondents filed the instant case in the District Court for the First Judicial District, Lewis and Clark County, contending that HB 442 violated Montana's constitutional provisions regarding privacy, due process, and equal protection of the laws. On November 25, 1997, the District Court granted Plaintiffs' motion for a preliminary injunction, but limited the scope of the injunction to Dr. Armstrong and P.A. Cahill. The District Court found that the Act affects a woman's constitutional right to obtain a first trimester abortion and that the State had advanced no compelling interest to justify prohibiting P.A. Cahill from performing abortions as she has safely done for the past

twenty years. The State appeals the court's order granting Plaintiffs' motion for a preliminary injunction.

Section 29. Article II, Section 10 of the Montana Constitution provides: Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 30. Modern legal notions of the right of privacy trace their roots to the political theory of English philosopher John Locke. Locke's concept of "liberty" was prevalent in colonial America and significantly influenced the framers of this country's foundation documents, including the United States Constitution. Among other things, this philosophy holds that the laws of nature require that each individual has an inherent property interest in his own person and has

the capacity for and the right of rational self-determination which must be promoted and protected by civil society and political institutions.

Section 31. John Stuart Mill recognized this fundamental right of self-determination and personal autonomy as both a limitation on the power of the government and as principle of preeminent deference to the individual. He state: The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because, it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise, ore even right.

Section 32. Despite prior judicial recognition of

this general "liberty interest" or right of privacy by both the United States Supreme Court and this Court, the delegates to Montana's 1972 Constitutional Convention viewed the textual inclusion of this right in Montana's new constitution as being necessary for the protection of the individual in an increasingly complex society . . . [in which] our area of privacy has decreased, decreased, decreased." This "right to be let alone . . . the most important right of them all," as Delegate Campbell put it, "produces . . . a semi-permeable wall of separation between individual and state" in much the same fashion that a constitutional wall separates church and state.

Section 33. Furthermore, it is clear from their debates that the delegates intended this right of privacy to be expansive—that it should encompass more than traditional search and

seizure. The right of privacy should also address information gathering and protect citizens from illegal private action and from legislation and governmental practices that interfere with the autonomy of each individual to make decisions in matters generally considered private. Elison, at 11-13.

Section 37. Defining personal autonomy has and continues to challenge courts, philosophers and authors. For example, the United States Supreme Court has stated that the right involves "intimate and personal choices" that concern "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." As John Stuart Mill stated: "Over himself, over his own body and mind, the individual is sovereign.

Section 38. Attempts to define this right notwithstanding, we conclude that, while it

may not be absolute, no final boundaries can be drawn around the personal autonomy component of the right of individual privacy. It is, at one and the same time, as narrow as is necessary to protect against a specific unlawful infringement of individual dignity and personal autonomy by the government—as in Gryczan—and as broad as are the State's ever innovative attempts to dictate in matters of conscience, to define individual values, and to condemn those found to be socially repugnant or politically unpopular.

Section 39. And that brings us to the matter at bar: broadly, the right of each individual to make medical judgments affecting her or his bodily integrity and health in partnership with a chosen health care provider free from the interference of the government.

In the case of Andrews v. Ballard (D.C. S.D.Tex. 1980), 498 F. Supp. 1038, 1047

(holding that the decision to obtain or reject medical treatment is encompassed by the right of privacy and that absent evidence showing that they were narrowly drawn to achieve a compelling state interest, Texas regulations requiring acupuncturists to be licensed physicians imposed a burden on and significantly interfered with the patient's decision to obtain acupuncture treatment and were therefore, unconstitutional).

Section 55. Recognition of these inherent rights to make medical judgments affecting one's bodily integrity and health and the right to choose and to refuse medical treatment are certainly not creatures of recent invention, however. Rather, like America's historical legal tradition acknowledging the fundamental common law right of self determination, acceptance of the right to make personal medical decisions as inherent in personal

autonomy is a long-standing and an integral part of this country's jurisprudence.

Section 56 Over a century ago, the Supreme Court observed: No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. The Supreme Court has reaffirmed that the right to control fundamental medical decisions is an aspect of the right of self-determination and personal autonomy that is "deeply rooted in this Nation's history and tradition." Moore v. City of East Cleveland (1977), 431 U.S. 494, 503, 97 S.Ct. 1932, 1937, 52 L.Ed.2d 531.

Section 57. In the context of "informed consent" cases, Montana, too, has recognized that each individual is the sovereign of his or

her own body. Copllins v. Itoh (1972), 160 Mont. 461, 467, 503 P.2d 36, 40 ("Each man is considered master of his own body and may request or prohibit even lifesaving surgery. The law will not allow a physician to substitute his own judgment, no matter how well founded, for that of his patient.") (citing Natanson v. Kline (Kan. 2960), 350 P.2d 1093, 1104). See also Dworkin, Freedom, at 134 ("The law of most American states seems settled that the autonomy of a competent patient will be decisive . . . and that doctors may not treat him against his will either for his sake or for the sake of some social interest in keeping him alive").

Section 58. Acknowledging these precepts of patient autonomy, however, is not to deny the obvious—that medical decisions affecting one's bodily integrity and health must often and necessarily be made in partnership with a

healthcare provider. In those instances, the individual typically seeks out and may consent to the most risky and intimate invasions of body and psyche, largely upon her or his personal trust in the education, training, experience, advice, and professional integrity of the health care provider he or she has chosen. This truism points up the seriousness of the infringement of personal autonomy and privacy that accompanies the government usurping, through laws or regulations which dictate how and by whom a specific medical procedure is to be performed, the patient's own informed health care decisions made in partnership with his or her chosen health care provider.

Section 59 Certainly, this right of choice in making personal health care decisions and in exercising personal autonomy is not without limits. In narrowly defined instances the state,

by clear and convincing evidence, may demonstrate a compelling interest in and obligation to legislate or regulate to preserve the safety, health and welfare of a particular class of patients or the general public from a medically-acknowledged, bond fide health risk. Subject to this narrow qualification, however, the legislature has neither a legitimate presence nor voice in the patient/health care provider relationship superior to the patient's right of personal autonomy which protects that relationship from infringement by the state.

Section 60 Worse, when, as in the case at bar, the legislature thrusts itself into this protected zone of individual privacy under the guise or protecting the patient's health, but, in reality, does so because of prevailing political ideology and the unrelenting pressure from individuals and organizations promoting their own beliefs

and values, then the state's infringement of personal autonomy is not only constitutionally impermissible, it is, as well, intellectually and morally indefensible.

Section 65. Indeed, the history of the 1995 amendments to Section 37-20-103, MCA, and Section 50-20-109, MCA, and the record of this case demonstrate how unrelenting pressure from individuals and organizations promoting their own particular values influence politicians to legislate, often via the back door, in matters of personal conscience, belief and choice and, concomitantly, infringe the zone of personal autonomy and procreative autonomy protected by the right of individual privacy. The reality of this case is that, while the legislature could not make pre-viability abortions facially unlawful, it could, and did—under the façade of "protecting women's health" and the lesser "undue burden" test of

Planned Parenthood—attempt to make it as difficult, as inconvenient and as costly as possible for women to exercise their right to obtain, from the health care provider of their choice, a specific medical procedure protected by the Due Process Clause of the federal constitution and, independently of the Fourteenth Amendment, protected by their greater right of individual privacy under Article II, Section 10 of the Montana Constitution. Furthermore, that the 1995 amendments to Section 37-20-103, MC, and Section 50-20-109, MC, may have been narrowly drawn is irrelevant, where, as here, there was not predicate compelling state interest justifying the amendments in the first place.

Section 66. There is simply no evidence in the record of this case that laws requiring pre-viability abortions be performed only by a

physician to the exclusion of a trained, experienced and medically competent physician assistant-certified, working under the supervision of a licensed physician, are necessary to protect the life, health or safety of women in this state. Indeed, there is overwhelming evidence to the contrary and that the 1995 amendments to Section 37-20-103, MCA, and Section 50-20-109, MCA, were the product of and grounded in nothing other than the divisive and vocal politics of abortion.

Appendices V and V-1

Appendix V

In their initial attempts to obtain justice through the legal system, Petitioners/Plaintiffs made enumerable Motions to federal district court judge James L. Robart, requesting discovery inre Case No. 08-78, which is now before the Justices of The United States Supreme Court. His reasoning for refusing/neglecting to allow discovery to proceed in order that the Petitioners/Plaintiffs might comply with his instructions to provide further information on who did what, when and where, is open to speculation.

However, what is not open to conjecture, is that by denying Petitioners/Plaintiffs their right to discovery, Judge Robart did, in fact, aid and abet the Defendants/Respondents in denying the Petitioners/Plaintiffs of their right to due process of the law. This fact is borne out through the Sixth Circuit Court of Appeals decision in the case of CenTra, Inc.; Detroit International Bridge Co., v.

David Estrin; Gowling Lafleur Henderson, LLP; Case No 07-1680. This case is cited, in part, in Appendix V-1 attached.

Appendix V-1

Appendix V-1

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

CenTra, Inc.; Detroit International Bridge Co.,

Plaintiffs-Appellants

Vs.

No. 07-1680

David Estrin; Gowling Lafleur Henderson, LLP,

Defendants-Appellees

Appeal from the United States District Court for the Eastern District of Michigan at Detroit. No. 06-15185

Nancy G. Edmunds, District Judge.

Argued: January 29, 2008

Decided and Filed: August 15, 2008

Before: MERRITT, DAUGHTREY, and MOORE, Circuit Judges

OPINION

KAREN NELSON MOORE, Circuit Judge.

The Detroit International Bridge Company ("DIBC") and its Michigan-based parent CenTra, Inc. (collectively "CenTra"), believed that more divided them from Windsor, Ontario than united them. For one thing, the Detroit River separates Windsor from Michigan. For another, Windsor and CenTra disagreed as to the future of the Ambassador Bridge, the CenTra-owned bridge that spans the Detroit River; while CenTra sought to add a second span to the bridge, Windsor wanted to stop that expansion. Yet CenTra was wrong in concluding that more divided than united. It turns out that Windsor and CenTra were both employing the same law firm, Gowling Lafleur Henderson, LLP ("Gowlings"): while Windsor hired Gowlings to help the city oppose the second span, CenTra hired Gowlings to help the company raise money to fund the construction of that same span. Although CenTra wanted to expand its

connection to Windsor, it was hoping to do so with an additional bridge, not by sharing legal counsel; thus, CenTra sued Gowlings for damages, alleging breach of contract, breach of fiduciary duties, and legal malpractice. The district court granted summary judgment for Gowlings, holding that CenTra impliedly consented to any conflict of interest in Gowling's simultaneous representation of adverse clients regarding the construction of the second span of the Ambassador Bridge. The district court found implied consent because it concluded that CenTra was aware that Gowlings had previously represented parties (including Windsor) directly adverse to CenTra in cases where Gowlings was not representing CenTra. **We believe that the district court erred in its granting of summary judgment. CenTra established genuine issues of material fact regarding not only whether it impliedly consented to the conflict of interest, but also whether it could even consent to the**

conflict in the first instance. Furthermore, the district court abused its discretion in granting summary judgment prior to discovery. We, therefore, REVERSE the district court's judgment and REMAND the case to the district court for further proceedings consistent with this opinion (emphasis added).